

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: LOWER MANHATTAN DISASTER SITE
LITIGATION

IN RE: COMBINED WORLD TRADE CENTER
AND LOWER MANHATTAN DISASTER SITE
LITIGATION

ROBERT SCHMIDT

Plaintiff,

21 MC 102 (AKH)

21 MC 103 (AKH)

**AFFIDAVIT OF DELAY IN RESPONSE
TO THE JULY 25, 2012 COURT ORDER
OF JUDGE ALVIN K. HELLERSTEIN**

06cv10878

STATE OF NEW YORK)
)s.s.:
COUNTY OF NEW YORK)

Robert Schmidt being duly sworn, hereby deposes and says:

1. I am the Plaintiff in the above captioned matter and respectfully offer this affidavit of delay in consideration of reinstating my case against the defendants listed in the above captioned mater.

2. I worked at the World Trade Center site, including the Pile and the Verizon Building, from approximately September 11, 2001 until November 5, 2001, where I worked for the New York Fire Department where I performed search and recovery functions as well as did some clean-up work in the area.

3. After my exposure at The World Trade Center site and The Verizon Building, I was diagnosed with Dyspnea, Ground Glass Syndrome, Laryngitis, Lung Nodules, Optic Problem, Orthopedic Injuries, Pharyngitis, Restrictive Lung Dysfunction, and Sinusitisamong other injuries.

4. After watching my injuries continually worsen after diagnosis, I had decided to file a claim in order to receive compensation for the injuries I sustained as a result of my exposure at the Pile and The Verizon Building.

conditions have been progressing ever since.

6. Throughout the seven years that my case has been pending, I have complied with each and every request that was asked of me by attorneys, including but not limited to, certifying my discovery responses. I was always available and responsive.

7. I gave sworn testimony in this case on December 15, 2008, almost four (4) years ago, in which I gave sworn testimony as to the facts and circumstances in my case.

8. On or about September 15, 2011, six years after I brought my claim, I was asked again to verify the discovery information in my case so that it can be uploaded to a database. As a result I signed a statement verifying that the discovery information in my case that was going to be uploaded to the database was true and correct to my knowledge, and that I was aware that if any of the information was willfully false that I would be subject to punishment.

9. I believed that by signing this statement that I was verifying, under the penalties of perjury the truthfulness of the information that was going to be uploaded to the database. See a copy of the Verification I signed at Exhibit 1.

10. Last year there was a lot of reports that Plaintiff like myself were going to have to make a decision as to whether to continue with their lawsuits or to withdraw their lawsuits in order to file a Zadroga Victims' Compensation Fund Claim. Most of these reports were conflicting, confusing and not that informative.

11. I finally realized that I needed to make a final decision by January 2, 2012.

12. It was not easy to come to a decision. My lawsuit was already pending for seven (7) years so I wanted to any alternative to litigation was initially appealing. At one point in time, I was seriously considering withdrawing my lawsuit and proceeding with a claim in the Victims' Compensation Fund. In fact, at one time in the Fall of 2011 I authorized my attorneys to discontinue my lawsuit in order to pursue a claim in the Victims' Compensation Fund.

continue with my lawsuit. I changed my mind on December 22, 2011, eleven days before the deadline. I believed that my decision was timely and that I would be able to proceed with my lawsuit.

14. Once I changed my mind to proceed with the my lawsuit, my attorneys informed me that I needed to verify yet again the information that was uploaded to the database and sign a new Certification that was substantially similar, and to me, almost identical to the Verification I signed months earlier. A copy of this new Certification is attached as Exhibit 2.

15. I believe that the two documents that I signed verifying the information for my case, which was uploaded to a database that are attached hereto as Exhibits 1 and 2 are substantially the same and nearly identical. I was confused as to why I had to sign the same thing twice.

16. Ever since I brought my lawsuit seven years ago, I have always made sure that I was complying with all of my discovery obligations. I knew that failure to comply with my discovery responsibilities would cause my case to be dismissed, and after suffering from these injuries, I could not afford that risk.

17. I originally certified the discovery information in my case 4 years ago December 2, 2008. Over the span of seven years that my case was pending, I was always actively involved in the prosecution of my case, as this is very important to me. I was shocked to learn that the Court dismissed my case a few weeks ago.

18. The only time that I questioned prosecuting my case was when I was exercising my statutory right prior to the January 2, 2012 deadline as to whether to proceed with my lawsuit. I should not be penalized now for exercising a statutory right I was exercising eight months ago. The ordeal I have faced since working down at the Ground Zero site and The Verizon Building has been devastating to me and my family, and I needed to make sure that I was able to make the best decision for myself.

19. At first, I believed that the best avenue to pursue my claim was through the Victims' Compensation Fund. However based on all of the new information that was being provided to me as the

January 2, 2012 statutory deadline was approaching I decided to change my mind and proceed with my lawsuit.

20. Once I finally ruled out the Victims' Compensation Fund as an avenue for compensation, I immediately consulted with my attorney and made sure that all of my discovery obligations were satisfied and signed yet another certification to my discovery responses.

21. I always thought that I was able to choose between my lawsuit or the Zadroga Fund. If the Court did not want to hear my case it should have dismissed it prior to the January 2, 2012 deadline instead of seven (7) months after the deadline so at least I would have a chance of receiving compensation in the Zadroga Fund.

22. Given the facts and circumstances surrounding my case, I hope that the Court will reconsider its decision in dismissing my case and reinstate my case so I can at least have a chance in receiving the compensation I feel that I deserve for the injuries I sustained while working in Lower Manhattan as a firefighter for the FDNY following the Collapse of the World Trade Center. I went down to protect the people of New York City, now I hope that the judicial system could protect me.

Pursuant to 28 U.S.C. §1746 I declare under the penalty of perjury that the foregoing is true and correct.



Robert Schmidt

Sworn to before me this 14th day of August, 2012.


Notary Public

CARMEN M. ROJAS
Notary Public, State of New York
No. 01RO6073898
Qualified in Bronx County
Commission Expires April 29, 2014

EXHIBIT 1

06cv10878

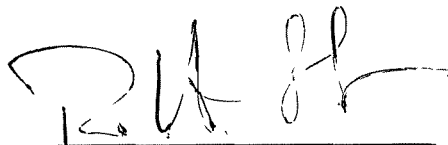
VERIFICATION

I verify that the foregoing responses are true and correct to my knowledge. I am aware that if any of the foregoing responses are willfully false, I am subject to punishment.

I further verify that certain facts and matters set forth in these responses are not within my personal knowledge, and that such facts and information have been assembled by my attorneys, Worby Groner Edelman & Napoli Bern, LLP based upon medical records, documents and other information collected by myself and my attorneys.

Dated: 9/15/11

Signature

A handwritten signature in black ink, appearing to read 'R. Schmidt', written over a horizontal line.

Robert Schmidt

EXHIBIT 2

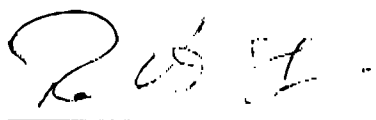
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CERTIFICATION

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that I have reviewed those questions and answers contained in the database docket 21MC102/103 (AKH) with reference to my individual claim, and those responses are true and correct.

Executed January 6, 2012

Signature



Robert Schmidt